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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SD COASTLINE LP,

12 Plaintiff,

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14 vs.
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18 ROBYN JEAN BUCK, et al.,

19 Defendants.
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CASE NO. 10CV2108 MMA (NLS)

ORDER:

**(1) GRANTING PLAINTIFF'S
MOTION TO REMAND CASE TO
STATE COURT;**

[Doc. No. 2]

**(2) DENYING AS MOOT
PLAINTIFF'S MOTION TO
SHORTEN TIME;**

[Doc. No. 3]

**(3) DENYING AS MOOT
DEFENDANT'S MOTION TO
DISMISS**

[Doc. No. 10]
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INTRODUCTION

24 On September 21, 2010, Plaintiff SD Coastline LP filed a Complaint for unlawful detainer
25 against Defendants Robyn Jean Buck ("Defendant") and other unascertained defendants in the
26 Superior Court of California, San Diego County.¹ Plaintiff's Complaint states it purchased the subject
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28 ¹Defendant Buck filed an action against SD Coastline LLP that is currently pending in this Court. *See Buck v. SD Coastline LLP*, Case No.10cv2107. Both cases are assigned to the same district judge pursuant to the Civil Local Rule 40.1.d; the cases are not consolidated.

1 property, 1769 Vale Terra Dr., Vista, CA 92084, and that Defendant, a tenant of the former owner of
 2 the property, failed to vacate the property after receiving a written 90 day notice to vacate.

3 On October 8, 2010, Defendant, proceeding *pro se*, filed a Notice of Removal to this Court.
 4 In her Notice of Removal, Defendant argues the Court has federal question subject matter jurisdiction.
 5 [Doc. No. 1.] Plaintiff filed a Motion to Remand and a Motion to Shorten Time for hearing on the
 6 Motion to Remand. [Doc. Nos. 2, 3.] The Court ordered Defendant to show cause why the case
 7 should not be remanded to state court. [Doc. No. 4.] Defendant responded to the Court's order to
 8 show cause, and also filed a Motion to Dismiss. [Doc. Nos. 8, 10.] For the reasons stated herein, the
 9 Court **GRANTS** Plaintiff's Motion to Remand, **DENIES** as moot Plaintiff's Motion to Shorten Time
 10 for hearing, and **DENIES** as moot Defendant's Motion to Dismiss.

11 LEGAL STANDARD

12 An action filed in state court may be removed to federal court only if the federal court would
 13 have had original subject matter jurisdiction over the action. 28 U.S.C. § 1441(a). The party seeking
 14 removal has the burden of establishing federal jurisdiction, and "the removal statute is strictly
 15 construed against removal jurisdiction." *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir.
 16 1988). If the Court, after a review of the notice of removal, finds that "it clearly appears on the face
 17 of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall
 18 make an order for summary remand." 28 U.S.C. § 1446(c)(4). "Federal jurisdiction must be rejected
 19 if there is any doubt as to the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564,
 20 566 (9th Cir. 1992).

21 DISCUSSION

22 Defendant argues removal is proper because even though Plaintiff pled a state law claim for
 23 unlawful detainer, Defendant interprets Plaintiff's Complaint as stating a federal claim under the new
 24 Protecting Tenants at Foreclosure Act of 2009 ("PTFA"). [Doc. No. 8.] The Court disagrees with
 25 Defendant.

26 The PTFA is a relatively recent federal statute that provides certain protections to tenants who
 27 reside in properties subject to foreclosure. Such protections include the right to continue living on the
 28 foreclosed property premises for the duration of their lease and the right to receive a 90 day notice to

1 vacate. The PTFA states, in pertinent part:

2 (a) IN GENERAL.-In the case of any foreclosure on a federally-related mortgage loan
3 or on any dwelling or residential real property after the date of enactment of this title,
4 any immediate successor in interest in such property pursuant to the foreclosure shall
5 assume such interest subject to-

6 (1) the provision, by such successor in interest of a notice to vacate to any bona fide
7 tenant at least 90 days before the effective date of such notice; and

8 (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure-

9 (A) under any bona fide lease entered into before the notice of foreclosure to occupy
10 the premises until the end of the remaining term of the lease, except that a successor
11 in interest may terminate a lease effective on the date of sale of the unit to a purchaser
12 who will occupy the unit as a primary residence, subject to the receipt by the tenant of
13 the 90 day notice under paragraph (1), or

14 (B) without a lease or with a lease terminable at will under state law, subject to the
15 receipt by the tenant of the 90 day notice under subsection (1),

16 except that nothing under this section shall affect the requirements for
17 termination of any Federal- or State-subsidized tenancy or of any State
18 or local law that provides longer time periods or other additional
19 protections for tenants.

20 Pub.L. No. 111-22, § 702, 123 Stat. 1660 (2009).

21 **I. Plaintiff Does not Assert a Federal Claim Under the PTFA**

22 Defendant argues that Plaintiff “expressly invoke[d] its rights under the PTFA” and that
23 Plaintiff attempts to state a cause of action under the PTFA. [Doc. No. 8.] The Court disagrees.
24 Plaintiff’s Complaint is devoid of any allegations that purport to assert a PTFA claim. In analyzing
25 a party’s claims, a court examines the facts alleged to determine the gravamen of the grievance. The
26 labels attached by the parties are not dispositive. *Rains v. Criterion Sys.*, 80 F.3d 339, 343 (9th Cir.
27 1996); *Howe v. Bank of America N.A.*, 179 Cal. App. 4th 1443, 1449 (2009); *Peterson v. Cellco*
28 *Partnership*, 164 Cal. App. 4th 1583, 1595-96 (2008).

Here, the gravamen of Plaintiff’s allegations is a state law claim for unlawful detainer. The
Complaint is entitled “Complaint for Unlawful Detainer,” Plaintiff asserts limited civil jurisdiction,
and seeks less than \$10,000 in damages. [Doc. No. 1.] Plaintiff’s state-based unlawful detainer claim
does not, as Defendant urges, become a federal cause of action merely by Plaintiff’s reference to a
federal statute. *See Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308,

314 (2005); *see also Rains*, 80 F.3d at 343 (state law creates the cause of action where plaintiff's complaint contained claim for wrongful termination in violation of public policy and merely referenced Title VII). Simply, Defendant's argument that Plaintiff has stated a federal claim upon which this Court may exercise jurisdiction is without merit. As such, the Court will not address Defendant's additional argument that the PTFA creates a federal cause of action in successors in interest.

II. Defendant's Claim or Defense Cannot Serve as a Basis for Removal

In an attempt to establish a federal claim, Defendant further contends that Plaintiff must plead and prove it served proper notice under the PTFA. Defendant argues that Plaintiff's notice is defective because the notice was "prematurely served," and thus Plaintiff should ultimately lose on grounds of the purported PTFA claim. [Doc. No. 8.]

However, a defendant's claims or defenses that a plaintiff has violated a federal statute cannot serve as a basis for federal question jurisdiction. *Takeda v. Northwestern Nat. Life Ins. Co.*, 765 F.2d 815, 822 (9th Cir.1985). "[T]he fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979) (internal citation omitted).

Defendant's contention that the "primary defect with the action is that . . . the notice was prematurely served," is in essence a claim or defense that Plaintiff has violated a federal statute. [Doc. No. 8.] It does not transform Plaintiff's state law claims into federal ones. Consequently, Defendant has not adequately supported her assertion that removal is proper on grounds of federal question jurisdiction.

CONCLUSION

For the reasons stated above, the Court finds Defendant has failed to show cause why this case should not be remanded to state court. Accordingly, the Court hereby **GRANTS** Plaintiff's motion to remand this case to state court, and **DENIES** as moot Plaintiff's motion to shorten time for hearing on motion to remand. The Court **DENIES** as moot Defendant's motion to dismiss.

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1 The clerk of Court shall transfer the file to the Superior Court of California, County of San Diego.

2 **IT IS SO ORDERED.**

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4 DATED: November 19, 2010

A handwritten signature in black ink, reading "Michael M. Anello", written over a horizontal line.

5 Hon. Michael M. Anello
6 United States District Judge
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